The authorities are divided as to whether there can be a *de facto* officer when there is no *de jure* office. *Norton* v. *Shelby County*, 118 U. S. 425. *Contra*, *Lang* v. *Bayonne*, 74 N. J. L. 455. Necessity demands that the public be protected in its dealings with public officers. See *Plymouth* v. *Painter*, 17 Conn. 585. Hence it is settled that the acts of a *de facto* officer within the scope of his apparent authority are valid so far as the rights of the public and interested third persons are concerned. *Wilcox* v. *Smith*, 5 Wend. (N. Y.) 231. These acts cannot be attacked collaterally. *Plymouth* v. *Painter*, *supra*. Thus contracts made by officers *de facto* are binding. *School Town of Milford* v. *Zeigler*, 1 Ind. App. 138. But there would be no reason for the application of this rule if the defect in title were notorious. *Conway* v. *City of St. Louis*, 9 Mo. App. 488.

QUIETING TITLE — CANCELLATION OF UNENFORCIBLE COVENANT. — By mesne conveyances the plaintiff acquired from the defendant a lot of land, the deed of which contained a covenant not to use the land for any but church purposes. The land had not been sold for a smaller price by reason of the covenant, and the covenant was of no value to the defendant, who was simply using it as a means of extortion. The plaintiff, claiming that the covenant was invalid and prevented a favorable mortgage of the property, filed a bill praying that the defendant be ordered to release it. *Held*, that the covenant is unenforcible and that the defendant be ordered to release it. *Rector, etc., of St. Stephens Church* v. *Rector, etc., of the Church of the Transfiguration*, 40 N. Y. L. J. 1940 (N. Y., App. Div., Jan. 1909).

The case is a novel one and the decision sane. It is especially noteworthy because of the long-continued tendency of the New York courts to limit within narrow bounds the jurisdiction of equity in this class of cases. Thus its courts will not entertain bills for the cancellation or restoration of paid notes, or of instruments obtained by fraud. *Fowler* v. *Palmer*, 62 N. Y. 533; *Globe Co.* v. *Reals*, 79 N. Y. 202. And it has long been the established New York rule that in a bill to remove a cloud on title the plaintiff must fail if the claim of the defendant is invalid on its face, or if its invalidity must inevitably be disclosed in its enforcement. *Scott* v. *Onderdonk*, 14 N. Y. 9. See 18 HARV. L. REV. 527; 2 AMES, CAS. EQ. JUR., 148, 150. This narrow and pedantic rule the court in the present case refuses to recognize on the authority of very early cases of the cancellation of instruments, although it grants that the covenant was invalid on its face, or would necessarily appear so in any attempt to enforce it. The result is refreshing, and it is to be hoped that it marks a tendency of the New York equity courts to get away from unnecessary technicalities and broaden their jurisdiction.

RULE AGAINST PERPETUITIES — REMOTENESS OF VESTING AS THE TEST IN NEW YORK. — A testator bequeathed personal property to his executors in trust to pay the income to W. for life, with the further direction: "and at her decease I give to her issue, share and share alike, such income, and as each of her said issue shall attain the age of 21 years, I give to it one equal undivided share of the principal"; and in case W. should die, leaving no issue which should attain 21 years, then the fund was to go to S. and M., persons then living. *Held*, that the gift to S. and M. is void for remoteness under the New York Revised Statutes. *Matter of Wilcox*, 194 N. Y. 288. See NOTES, p. 520.

VENDOR AND PURCHASER — RIGHTS AND LIABILITIES — CONDITIONS PRECEDENT TO FORFEITURE OF PAYMENTS ON DEFAULT. — The defendant agreed to convey certain land to the plaintiff as soon as he got title. Payment was to be by installments, all payments to be forfeited on a default. There was default in the last installments; but the defendant did not declare a forfeiture until after he had acquired title, nor did he ever tender a deed. The plaintiff sought specific performance. *Held*, that the plaintiff is entitled to

relief; for after the defendant has acquired title he cannot enforce a forfeiture without having tendered a deed. *Tacoma Water Supply Co.* v. *Dumermuth*, 99 Pac. 741 (Wash.).

A vendor may either enforce or waive a forfeiture clause; but if he wishes to enforce it he must give notice of that intention. *Chrisman* v. *Miller*, 21 Ill. 227, 236; *Harris* v. *Troup*, 8 Paige (N. Y.) 422. If forfeiture is not declared until performance of the vendor's promise is due, the promises become mutual and concurrent. *Beecher* v. *Conradt*, 3 Kern. (N. Y.) 108. Thereafter the vendor cannot declare a forfeiture without first tendering a deed. *Stein* v. *Waddell*, 37 Wash. 634. Hence in the principal case the defendant never made a valid declaration of forfeiture. Even if he had, it is not certain that he could avoid specific performance. For the forfeiture clause alone does not make time of the essence. *Barnard* v. *Lee*, 97 Mass. 92. And even though the parties stipulate that time shall be of the essence, equity may refuse to allow a forfeiture. *National Land Co.* v. *Perry*, 23 Kan. 140; *Richmond* v. *Robinson*, 12 Mich. 193. In England and in some American jurisdictions, if the delay does not put the parties in such a position that damages will not be an adequate compensation, equity will give specific performance, despite the forfeiture clause. *In re Dagenham Co.*, 8 Ch. App. 1022; *Edgerton* v. *Peckham*, 11 Paige (N. Y.) 352.

VENDOR AND PURCHASER — SPECIFIC PERFORMANCE — MARKETABLE TITLE. — The plaintiff sued to recover an installment paid under a contract for the purchase of land, on the ground that the defendant could not furnish a marketable title. The defendant denied that his title was unmarketable, and asked specific performance. The determination of the validity of the title would involve a decision upon a doubtful point of law. *Held*, that the plaintiff will not be compelled to take a conveyance from the defendant. *Dixon* v. *Cozine*, 114 N. Y. Supp. 615. See NOTES, p. 529.

WATERS AND WATERCOURSES — NATURAL WATERCOURSES — POLLUTION BY MINING OPERATIONS. — The plaintiff, a lower riparian owner, was damaged by the pollution of the stream by salt water caused to flow into it by the defendant, in mining petroleum. The defendant's operations were conducted with due care in the only known method, and the discharge of salt water into the stream was inevitable. *Held*, that the plaintiff may recover damages. *Straight* v. *Hover*, 54 Oh. L. Bull. Supp. 78 (Oh. Sup. Ct., Jan. 26, 1909).

The rule that an upper riparian owner is liable to a lower owner for any injury from pollution of the stream caused by an unreasonable user has been generally recognized. *Ferguson* v. *Firmenich Manufacturing Co.*, 77 Ia. 576. The reasonableness of the user is a question for the jury upon all the circumstances of the case. *Hayes* v. *Waldron*, 44 N. H. 580. Thus where the owner of cattle pastured them near a stream, and they so befouled the water that it was unfit for use by a water company, it was held that the owner was not liable. *Helfrich* v. *Catonsville Water Co.*, 74 Md. 269. But a user for manufacturing purposes is generally considered unreasonable. See *Strobel* v. *Kerr Salt Co.*, 164 N. Y. 303. And it is no defense that the pollution was unavoidable. *Pennington* v. *Brinsop Hall Coal Co.*, L. R. 5 Ch. D. 769. But the rule has been laid down that where a work is lawful and cannot be carried on elsewhere, there is no liability in the absence of negligence. *Barnard* v. *Sherley*, 135 Ind. 547. And it has been held that the protection of important industries renders the general rule of liability inapplicable. *Pa. Coal Co.* v. *Sanderson*, 113 Pa. St. 126. But the weight of authority supports the principal case. *Bowling Coal Co.* v. *Ruffner*, 100 S. W. 116 (Tenn.). And in most jurisdictions the plaintiff might also have obtained an injunction. *Beach* v. *Sterling Iron & Zinc Co.*, 54 N. J. Eq. 65. See 14 HARV. L. REV. 458; 18 *ibid.* 149. *Contra*, *Salem Iron Co.* v. *Hyland*, 74 Oh. St. 160.